

# SENATE BILL No. 61

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 16-37-2-2.1.

**Synopsis:** Rescission of paternity affidavit. Provides that evidence that a man is excluded as the biological father of a child based on a genetic test that indicates that the man is not the child's biological father constitutes a material mistake of fact that existed in the execution of the paternity affidavit. (The introduced version of this bill was prepared by the child custody and support advisory committee.)

**Effective:** July 1, 2010.

**Steele**

January 5, 2010, read first time and referred to Committee on Judiciary.

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Second Regular Session 116th General Assembly (2010)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

## SENATE BILL No. 61

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A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1       SECTION 1. IC 16-37-2-2.1, AS AMENDED BY P.L.146-2006,  
2       SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3       JULY 1, 2010]: Sec. 2.1. (a) A paternity affidavit may be executed as  
4       provided in this section through:  
5               (1) a hospital; or  
6               (2) a local health department.  
7       (b) Immediately before or after the birth of a child who is born out  
8       of wedlock, a person who attends or plans to attend the birth, including  
9       personnel of all public or private birthing hospitals, shall:  
10              (1) provide an opportunity for:  
11                  (A) the child's mother; and  
12                  (B) a man who reasonably appears to be the child's biological  
13                  father;  
14              to execute an affidavit acknowledging paternity of the child; and  
15              (2) verbally explain to the individuals listed in subdivision (1) the  
16              legal effects of an executed paternity affidavit as described in  
17              subsection (g).



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(c) A paternity affidavit must be executed on a form provided by the state department. The paternity affidavit is valid only if the affidavit is executed as follows:

(1) If executed through a hospital, the paternity affidavit must be completed not more than seventy-two (72) hours after the child's birth.

(2) If executed through a local health department, the paternity affidavit must be completed before the child has reached the age of emancipation.

(d) A paternity affidavit is not valid if it is executed after the mother of the child has executed a consent to adoption of the child and a petition to adopt the child has been filed.

(e) A paternity affidavit executed under this section must contain or be attached to all of the following:

(1) The mother's sworn statement asserting that a person described in subsection (b)(1)(B) is the child's biological father.

(2) A statement by a person identified as the father under subdivision (1) attesting to a belief that he is the child's biological father.

(3) Written information furnished by the child support bureau of the department of child services:

(A) explaining the effect of an executed paternity affidavit as described in subsection (g); and

(B) describing the availability of child support enforcement services.

(4) The Social Security number of each parent.

(f) A woman who knowingly or intentionally falsely names a man as the child's biological father under this section commits a Class A misdemeanor.

(g) A paternity affidavit executed under this section:

(1) establishes paternity;

(2) gives rise to parental rights and responsibilities of the person described in subsection (e)(2), including:

(A) the right of the child's mother or the Title IV-D agency to obtain a child support order against the person, which may include an order requiring the provision of health insurance coverage; and

(B) reasonable parenting time rights unless another determination is made by a court in a proceeding under IC 31-14-14; and

(3) may be filed with a court by the department of child services.

However, if a paternity affidavit is executed under this section, the

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1 child's mother has sole legal custody of the child unless another  
 2 custody determination is made by a court in a proceeding under  
 3 IC 31-14.

4 (h) Notwithstanding any other law, a man who is a party to a  
 5 paternity affidavit executed under this section may, within sixty (60)  
 6 days of the date that a paternity affidavit is executed under this section,  
 7 file an action in a court with jurisdiction over paternity to request an  
 8 order for a genetic test.

9 (i) A paternity affidavit that is properly executed under this section  
 10 may not be rescinded more than sixty (60) days after the paternity  
 11 affidavit is executed unless a court:

12 (1) has determined that fraud, duress, or material mistake of fact  
 13 existed in the execution of the paternity affidavit; and

14 (2) at the request of a man described in subsection (h), has  
 15 ordered a genetic test, and the test indicates that the man is  
 16 excluded as the father of the child.

17 **Evidence that a man is excluded as the biological father of a child**  
 18 **based on a genetic test that indicates that the man is not the child's**  
 19 **biological father constitutes a material mistake of fact that existed**  
 20 **in the execution of the paternity affidavit. A court is not required**  
 21 **to order two (2) genetic tests under this subsection.**

22 (j) Unless good cause is shown, a court shall not suspend the legal  
 23 responsibilities under subsection (g)(2)(A) of a party to the executed  
 24 paternity affidavit during a challenge to the affidavit.

25 (k) The court may not set aside the paternity affidavit unless a  
 26 genetic test ordered under subsection (h) or (i) excludes the person who  
 27 executed the paternity affidavit as the child's biological father.

28 (l) If a paternity affidavit is not executed under subsection (b), the  
 29 hospital where the birth occurs or a person in attendance at the birth  
 30 shall inform the child's mother of services available for establishing  
 31 paternity.

32 (m) Except as provided in this section, if a man has executed a  
 33 paternity affidavit in accordance with this section, the executed  
 34 paternity affidavit conclusively establishes the man as the legal father  
 35 of a child without any further proceedings by a court.

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